THE MEDICARE PRESCRIPTION DRUG, IMPROVEMENT AND MODERNIZATION ACT OF 2003: *CONTROLLING RISING PRESCRIPTION DRUG COSTS*

Background

The current Medicare program lacks outpatient prescription drug coverage. For too long, America's seniors and individuals with disabilities have struggled to acquire the medications they so desperately need. Recently signed into law by President George W. Bush, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (H.R.1) will provide prescription drug coverage to over 40 million Medicare beneficiaries for the first time in the program's history. This historic, bipartisan agreement helps lay the foundation for a strong and modern Medicare for today's seniors, as well as tomorrow's seniors.

How Does the Legislation Address Rising Prescription Drug Costs?

Despite some misconceptions, this law includes several important reforms that will directly lead to lower prescription drug costs for seniors and all consumers:

- ***Speeds access to safe, effective, and low-cost generic drugs.*** Reforms to the landmark 1984 Hatch-Waxman will speed entry of generic pharmaceuticals to the marketplace, providing beneficiaries with greater access to safe, affordable pharmaceuticals.

- ***New market forces and competition will drive down drug prices.*** Private health plans will be able to negotiate with pharmaceutical manufacturers to get the best deals they can for Medicare beneficiaries. Beneficiaries will now have new power to comparison shop and reap the savings of negotiated prices. The non-partisan Congressional Budget Office (CBO) estimates that this will not only be effective in controlling drug costs, but will also result in an initial savings of 25% off prescription drug costs.

- ***Prevents artificial limits on drug discounts, saving Medicare $18 billion between 2003 and 2012 according to the Congressional Budget Office.*** Negotiations between prescription drug plans and pharmaceutical manufacturers will not be subject to the Medicaid "best price" rules, which place an artificial limit on discounts available to Medicare and its beneficiaries. This means that competing plans will have the ability to offer better prices and discounts for seniors and disabled individuals.

- ***Encourages comparative effectiveness of prescription drugs.*** The new law calls for new research on the comparative effectiveness of prescription drugs and other health care items and services. This provision ensures that such information is quickly disseminated to patients, health care providers, health plans, and other entities. By giving health care professionals and other decision-makers better information on the comparative effectiveness of treatment options, this will ensure that Medicare and other health care vendors get the most value for their money.

Ability to Negotiate Prescription Drug Prices

Some opponents of the legislation cite language in the new law prohibiting the federal government from directly setting prices for prescription drugs and argue that this somehow will lead to higher drug prices. In fact, the law specifies that the government "may not interfere with the negotiations between drug manufacturers and pharmacies and PDP sponsors" and "may not require a particular formulary or institute a price structure" **in order to protect beneficiaries and encourage privately negotiated prescription drug discounts. This provision protects consumers and ensures price competition to lower drug costs:**

1. It prevents the government from interfering in decisions about which medicines a beneficiary should be able to receive.
2. It allows private health plans to directly negotiate with pharmaceutical manufacturers and pharmacies, passing these savings onto the beneficiaries themselves.

In addition, it is important to point out that this **"noninterference" language was a creation of Congressional Democrats, and received strong support from both Democrats and Republicans alike**. It first appeared in a May 2000 bill sponsored by Senator Daschle known as the Medicare Expansion for Needed Drugs (MEND) Act of 2000 (S.2541):

- Senator Daschle's bill was supported by 33 Democratic cosponsors (Akaka, Baucus, Biden, Bingaman, Boxer, Bryan, Byrd, Cleland, Dodd, Dorgan, Durbin, Feinstein, Graham, Harkin, Hollings, Inouye, Johnson, Kennedy, Kerry, Lautenbery, Leahy, Levin, Lincoln, Mikulski, Moynihan, Murray, Reed, Reid, Robb, Rockefeller, Sarbanes, Schumer, and Wellstone).

- The language appeared on page 5, line 6:
"(b) NONINTERFERENCE.- In administering the prescription drug benefit program established under this part, the Secretary may not- (1) require a particular formulary or institute a price structure for benefits; (2) interfere in any way with negotiations between private entities and drug manufacturers, or wholesalers; or (3) otherwise interfere with the competitive nature of providing a prescription drug benefit through private entities."

- Further, nearly identical language appeared in the Prescription Drug and Medicare Improvement Act of 2003 (S.1), which passed the United States Senate with an overwhelmingly bipartisan vote of 76 to 21 in June 2003.

Guaranteed Government Fallback Plan

The bipartisan agreement includes a government fallback plan. While the Secretary may not negotiate with pharmaceutical wholesalers or manufacturers or pharmacies to set government prices (as provided in previous bills introduced and supported by Democrats), **the Secretary must guarantee that all seniors who remain in the traditional Medicare program have access to the standard drug benefit in the Conference Report**. If no private risk-bearing plan materializes, the Secretary may assume risk on behalf of the government to ensure that plans do participate. If no reduced-risk plans are willing to participate, the Secretary must then contract with a non-risk bearing plan, such as a pharmacy benefit manager (PBM), to guarantee that all beneficiaries who stay in traditional Medicare have access to the standard drug benefit.